

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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BETH AMENDOLA, on behalf of herself	:
and others similarly situated,	:
	:
Plaintiffs,	:
	:
v.	:
	:
BRISTOL-MYERS SQUIBB COMPANY,	:
and Does 1 through 20, inclusive,	:
	:
Defendant.	:
-----X	

07 CV 6088 (DLC)

(ECF CASE)

DECLARATION OF
JOSE XAVIER POLIT

JOSE XAVIER POLIT, declares, pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. I am a Senior Territory Business Manager (“TBM” or “sales representative”) in the Immunoscience business division for Bristol-Myers Squibb Company (“BMS”). I have been with BMS since July 2006.
2. When I was hired for this position, the hiring manager inquired a great deal about my past sales experience. I believe my prior extensive sales experience in the pharmaceutical industry played a very large role in my hiring.
3. I am a member of the Northeast Region and I represent the Long Island, New York territory, which covers a portion of Nassau County and all of Suffolk County. I am the only territory business manager assigned to that territory. I work out of my car and my home.
4. It is my responsibility to sell and promote Orencia, an intravenous pharmaceutical drug used to treat rheumatoid arthritis, to physicians in private offices as well as

to hospitals in my territory. About 80% of my customers are physicians in private offices, and about 20% are hospitals.

5. My job involves competing with other pharmaceutical companies who sell similar products and educating and asking the physicians and hospitals in my territory to order and/or prescribe Orencia.

6. Hospital calls are often more involved and complex than calls on private doctor's offices and, therefore, take up much more time than private office calls. To sell and promote Orencia in hospitals, I do not merely focus on doctors, nurses, office managers, practice managers, billing managers, but I also call on pharmacy directors and other hospital staff, including anyone who is involved in treating patients. Additionally, in a hospital setting, if my product is not already on the hospital formulary (*i.e.*, list of drugs the hospital uses for rheumatoid arthritis), one of my goals would be to try to get that product added to the formulary.

7. While I am given a call plan every six months with physicians and hospitals on whom I can call, I have discretion to add/delete names from that list. For example, when I call on hospitals, there are often new residents and physicians whom I add to my call list, and it is important to stay on top of who is working in the hospital. Though I am required to run the changes by my manager, my changes are almost always approved.

8. The call plan does not provide any guidance or suggestions as to how often I should call on the doctors and hospitals in my territory. It is entirely up to me whether to call on a particular doctor once a month, ten times a month, or not at all. I decide who to call on and how often to call on them. I make these decisions based on what I believe will maximize sales and drive market share of Orencia in my territory.

9. I determine my weekly schedule and select which doctors and/or hospitals

I will call on in a given day. This schedule does not need to be approved by anyone at BMS.

10. My target per day of calls is to call on 4 non-prescribers (i.e., office managers, nurses, etc.) and 4 prescribers per day. Sometimes I hit both targets, sometimes I go over, and there are other times I do not hit those targets in a given day.

11. I am responsible for gaining commitments from the doctors and hospitals I call upon to order and use Orendia where appropriate for their patients.

12. Getting a commitment means asking the doctor to agree to order Orendia for his/her patients, where appropriate. Because Orendia is an intravenous drug, doctors do not write prescriptions that patients themselves fill. Rather, the physicians, should they decide to purchase Orendia, order it through a specialty pharmacy or wholesaler and then the physician infuses the patient with the drug at the hospital or doctor's office. Thus, the doctor with whom I am speaking is usually the actual purchaser of the drug. In rare cases, depending on a patient's insurance coverage, a doctor may give a prescription to a patient, who then can go to a pharmacy to have it filled (and the patient would then need to have Orendia infused by the physician).

13. This process of gaining a commitment begins with developing a relationship with the doctor's office or hospital I am calling upon. I also use various sales tools, including clinical reprints, visual aids, package inserts and "leave behinds" (miniature sales aids that a sales representative can leave behind with a physician for his reference), and promotional programs.

14. I have a great deal of control over how I manage my business in my territory. I consider my territory to be my own business, my responsibility, my world, and it is up to me how to manage it.

15. I select the combination of sales aids I use on a given call based upon the

physician I am speaking with during my call and the questions that physician asks, his interests and his needs.

16. It is also important for me to ask a physician the right questions on a call. Which questions I ask depends on the doctor I am calling upon. Every account is different; every physician is unique. There are a variety of personalities to deal with, and I have to adjust my approach depending on the doctor to whom I am speaking. This is a skill I have developed on my own. I am not told what questions to ask, or when to ask them.

17. Before going on a call, I do pre-call planning, during which I review previous call notes from my last call with the physician to determine what to focus on in my next call with that physician and which issues to follow-up on from my last call. I prepare for longer calls and shorter calls just in case the doctor has limited time to speak with me or, alternatively, in the event he has extra time to talk and would like to discuss issues in more detail. No one tells me how to prepare for these calls, how long I should spend preparing, or what goals I should set for my next call.

18. BMS provides sales representatives with tools to use on a call but does not tell sales representatives what exactly to say or what questions to ask. BMS has a sales model called ENGAGE that is meant to provide a road map or guide for a sales call. For example, while there are certain "core" messages (such as efficacy of the drug) that we are expected to convey to physicians, we are not required to deliver the messages verbatim. Rather, I tailor each call and each message to the specific physician and the specific situation.

19. In addition, I conduct promotional programs and exercise a substantial amount of discretion in doing so. I choose to do these programs because it helps me educate and build a professional relationship with the doctors I call on. I do dinners in the evenings and do

breakfast and lunch programs during the day. I independently decide who to invite and whether to have a speaker (and, if so, who that speaker will be). I also independently choose when to do these programs.

20. I am largely unsupervised in my role as a Senior Territory Business Manager. My district business manager travels on calls with me only about once or twice a month for observation purposes and to provide coaching so that I can be successful and progress with my career.

21. I earn over \$100,000 combined in salary and incentive compensation. For example, my base salary last year was approximately \$92,000 and now is approximately \$97,000. I earned approximately \$17,000 in incentive compensation (and sign-on bonus) in 2006, and my 2007 incentive compensation target was about \$23,000.

22. My incentive compensation is based on sales in my territory. I believe that it is calculated partly on how much I have increased or grown sales in my territory over the last year, and partly on total sales in my territory (a set dollar goal). Accordingly, I manage my territory and call on physicians and hospitals with the objective of driving market share and increasing sales of Orendia in my territory.

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I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on February 5, 2008



JOSE XAVIER POLIT